United States Court of Appeals

for the Second Circuit

BRIEF FOR APPELLANT

76-1234

To Be Argued By:

JOSEPH BEELER

UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

Docket No. 76-1234

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

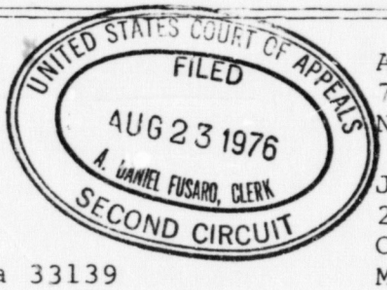
v.

FRANCOIS ROSSI,

Defendant-Appellant.

On Appeal from the United States District Court
for the Eastern District of New York

BRIEF FOR APPELLANT



ALBERT J. KRIEGER
745 Fifth Avenue
New York, New York 10022

JOSEPH BEELER
2829 Bird Avenue
Coconut Grove
Miami, Florida 33133

Attorneys for
Defendant-Appellant

Of Counsel:

DONNA R. BLAUSTEIN
1753 Alton Road
Miami Beach, Florida 33139

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PRELIMINARY STATEMENT

On October 16, 1972 Defendant-appellant Francois Rossi was indicted on a charge of conspiring to import narcotics between January 1969 and September 1972 in violation of §§ 173 and 174 of Title 21, United States Code. On February 10, 1973, the Defendant was arrested in Spain and subsequently extradited and delivered to United States' authority.

On February 15, 1973, Mr. Rossi was indicted on a charge of conspiracy to violate Federal Narcotic Importation laws (21 U.S.C. §§ 173, 174) between January 1, 1965 and May 1, 1971. After pleading not guilty to the charge in the latter indictment, he was tried by jury in the United States District Court for the Eastern District of New York, the Honorable Jacob Mishler, Chief Judge, presiding. On January 14, 1976 the jury returned a verdict of guilty. Mr. Rossi was sentenced to twenty years' imprisonment. No opinions were rendered by the Court below.

STATEMENT OF THE FACTS

Defendant-appellant Rossi was accused of conspiring to violate the narcotics laws of the United States. The salient indictment charged, in part:

> From on or about the first day of January 1965, and continuously thereafter up to and including the date of the filing of this indictment, within the Eastern District of New York, and elsewhere, Francois Rossi, also known as "Marcello," Paul Paganacci, Francois Chiappe, Miguel Russo, Elio Paolo Gigante, Mariano Warden, Felice Bonetti, Cesar Melchiore, and John Doe, also known as "Dino," the defendants, together with Michel Simon Nicoli, named herein as a co-conspirator but not as a defendant, and others known and unknown to the grand jury, unlawfully, wilfully and knowingly did combine, conspire, confederate and agree together and with each other to violate prior to May 1, 1971 Sections 173 and 174 of Title 21, United States Code.

Michel Nicoli

The government's case in chief commenced with the testimony of alleged co-conspirator, Michel Nicoli, alias Ricardo Spuncle, Maurice Rosen, Miguel Doscentos, Maximo Demaggi, Carlos Calucci Silvera, and Antonio Vasquez. Nicoli's long testimony established his own extensive traffic in illegal narcotics importation from early in 1965 until his arrest in Sao Paolo, Brazil in October 1972. By his own testimony, Nicoli was responsible for the importation of hundreds of thousands of dollars worth of narcotic drugs into the United States. On the stand he testified to trips made in the years 1965 through 1967, where allegedly he, Rossi, and Francois Chiappe purchased and imported heroin from France, through Buenos Aires, to the United States. According to

Nicoli, Chiappe's primary function was to supply the money, while he and the defendant Rossi acted as merchant-couriers. Nicoli testified to the increased use, as business expanded, of additional couriers and the establishment of a new route through Canada.

In 1968, the nature of the activity changed slightly. It no longer was necessary for the alleged conspirators to leave the United States. Instead, they arranged with Paul Paganacci to purchase heroin in Texas for re-sale in New York, thus eliminating the hazard of importation. Nicoli testified that, in addition to Paganacci, two new partners were acquired, Jean and Vincent Colonna. The amounts dealt in were increased in size, now that the problems of importation were diminished. The first deal was for 40 kilograms of heroin. Further trips followed in November 1968 (80 kilograms), March 1969 (40 kilograms), August 1969 (100 kilograms), December 1969 (60 kilograms), May 1970 (60 kilograms) and January 1971 (60 kilograms). The transaction of January 1971 was the last one Nicoli testified to. He was arrested by Brazilian police on October 4, 1972 and expelled to the United States on November 16, 1972.

In his testimony, Nicoli named more than a dozen individuals he said were involved in the narcotics transactions; he admitted his own extensive involvement in planning, purchasing, transporting and selling drugs; and he revealed his elaborate reliance on false passports and documents and his various sources for obtaining these papers, including another government witness, Jose Maniero-Ventoso. Nicoli attempted to implicate Rossi in every transaction in which he himself was involved.

Nicoli admitted to extensive torture by the Brazilian police and to his refusal to reveal any information to them. He admitted to reluctant cooperation with the United States government and testified that many of his statements were deliberate lies, made as part of a plan to harm as few of his friends as possible and to aid himself. After pleading guilty to three separate indictments, part of his arrangement with the American government, Nicoli obtained a minimum three-year sentence, and served total time of approximately one and one-half years' incarceration. In addition, he was given an unsupervised five-year parole, financial assistance for living and rent, importation of and permission to marry his common-law wife, and the expectation of permanent United States residence for himself, his wife, and his child.

French Police Surveillance

The Government's second witness, John Ravenello, was a Division Inspector of the French National Police. He testified to his surveillance of Pierre Marsot and Pierre Gheissen in February 1966. As a result of that surveillance, he arrested them and a sailor, Joseph Alphonsi, aboard a boat in LeHavre Harbor and confiscated what he identified as nine kilograms of heroin.

Jose Manuel Maniero Ventoso

The next prosecuting witness, whose identity was revealed to the defense only two days before he was called to the stand, was Jose Manuel Maniero-Ventoso. Maniero testified that during 1966 and 1967 he obtained false Uruguayan identity cards for

Francois Chiappe, Miguel Di Santos (Nicoli) and Marcello Gaspari, whom he identified as the defendant Rossi. He himself served four months in jail in Uruguay for his activities in obtaining false papers. By his testimony, he attempted to place himself in the position of an honest man, merely seeking to help others in need of legitimate papers -- testimony which was brought into question by the prosecution's star witness Nicoli, who stated that Maniero was well aware that the documents he was obtaining were false.

Mounties

The next three government witnesses were members of the Royal Canadian Mounted Police. Andre Pouliot testified to the arrest of Andrea Settembre and Giuseppe Quartano at Dorval Airport, Quebec, on December 13, 1967, in possession of ten and eight bags of white powder, respectively. Leo Daigh testified to the arrest of Carmine Russo on the same day at the Queen Elizabeth Hotel in Montreal and the confiscation of eight bags containing white powder. Gaston McDuff testified to performing the Marquis-regent test on samples from each confiscation and his determination that each was heroin.

Records

Joseph Sena, an investigator for the United States Immigration and Naturalization Service, New York City, appeared to explain the forms used by the Department and to introduce immigration form 1-94 from a departing flight of Argentine Airlines from New York, dated April 20, 1968 in the name of Vasquez but containing irregularities in its coding, pointing to the use by a different individual.

Arresting Agent

The last prosecution witness, Dominick Mingiane, an employee of the Drug Enforcement Administration, testified to the arrest of defendant Rossi on February 9, 1973 in Barcelona, Spain, and over strong objections from the defense was allowed to introduce money and papers seized from the apartment outside of which Rossi was arrested.

ARGUMENT

I.

DEFENDANT WAS BROUGHT TO TRIAL UNDER A DIFFERENT INDICTMENT THAN THAT FOR WHICH HE WAS EXTRADITED, THUS THE DISTRICT COURT DID NOT HAVE PERSONAL JURISDICTION OVER HIM.

A continuing contention of the defense, throughout the trial, (Tr. 9-10, 12, 16, 619, 816) was that the prosecution had obtained an extradition order for Mr. Rossi based on Indictment #72-CR-1162 rather than #73-CR-164, under which he was tried. The extradition order itself (Defendant's Exhibit D) accused the defendant of violations of §§ 173 and 174 of Title 21 and conspiracy from January 1, 1969 to September, 1972, charges which only fit the indictment #72-CR-1162. Although the Court requested the prosecution to straighten out the facts and determine with certainty which indictment was used at the extradition proceedings (Tr. 11-12), the government never did so with any convincing clarity. Thus, the prosecution failed to establish a basic requirement necessary for the trial court to hear the case -- jurisdiction over the person of the defendant.

The early leading case, United States v. Rauscher, 119 U.S. 407 (1886) established the clear rule that "the country receiving the offender against its laws from another country had no right to proceed against him for any offense than that for which he has been delivered up." In Rauscher, the defendant was extradited pursuant to a treaty with Great Britain on the charge of murder, a crime enumerated in the treaty; he was subsequently tried on a charge of cruel and unusual punishment of the individual whom he

murdered, a crime not listed in the treaty. Because of the failure to extradite and try on the same charge, the court was found not to have jurisdiction.

Later decisions followed and expanded the doctrine espoused in Rauscher. Thus, there can be no prosecution for crimes which are listed in the treaty with a foreign country, but for which extradition was not specifically granted. Johnson v. Browne, 205 U.S. 309 (1907). Even where there is no treaty or the crime for which extradition has been granted is not listed in the treaty, the courts have recognized and upheld the "principle of specialty." United States v. Paroutian, 299 F.2d 486 (2d Cir. 1962); Shapiro v. Ferrandina, 478 F.2d 894 (2d Cir.), cert. pet. dism. under Rule 60, 414 U.S. 884 (1973).

In Shapiro, supra, the court of course cited with approval the statement in 1 Oppenheim, International Law 702 (8th Ed. Lautepacht 1955) that "the principle of specialty has been viewed as a privilege of the asylum state, designed to protect its dignity and interest, rather than a right accruing to the accused." But the case law also makes it clear that the courts should decide whether the country might object (United States v. Paroutian, supra, at 490; Fioconni v. Attorney General of the United States, 462 F.2d 475 (2d Cir.), cert. denied, 409 U.S. 1059 (1972). Thus, it has been established that the United States courts accept or reject jurisdiction over the person of the defendant based on their interpretation of the validity of the indictment and extradition proceedings, rather than waiting for formal objections to come from the asylum country.

It is worth noting that the defendant in the instant proceeding not only did not waive his objection to the jurisdiction of the United States court but attempted to introduce important evidence which would indicate why the asylum country might object to jurisdiction. Testimony was presented of objections made by France to the extradition proceeding (Tr. 752-54). The defense clearly established the priority of France's extradition claim over that of the United States. Spain chose to accept the claim of the United States but one factor in the Spanish decision may well have been the recent dates of the conspiracy alleged in #72-CR-1162 (1969-1972). It is certainly arguable that the Spanish government must have exercised its discretion in favor of the country most likely to obtain a conviction. If the Spanish government had been aware that the defendant was to be tried for an alleged conspiracy beginning in 1965, it may well have chosen to acknowledge the extradition request of France. Thus, it is highly probable that the Spanish government, if apprised of all the facts, would object to the trial of the defendant on a charge other than that for which he was extradited.

In view of the irregularities in the extradition and indictment and the established interest of a third country in acquiring jurisdiction over the defendant, factors which may well have caused the asylum country to object to a trial on a different charge from that presented in the extradition proceedings, the prosecution has failed to meet its burden demonstrating that the Court had valid jurisdiction over the person of the defendant. This Court should reverse the defendant's conviction and remand the case for a new trial based on the indictment for which extradition was obtained.

II.

THE DEFENDANT WAS DENIED DUE PROCESS AND THE OPPORTUNITY TO PRESENT A DEFENSE BY THE CONDUCT OF THE PROSECUTOR IN NOT DISCLOSING TO DEFENSE COUNSEL THAT HIS SECRET CO-CONSPIRATOR WITNESS HAD CHARACTERIZED 3500 MATERIALS, HEAVILY RELIED UPON BY THE DEFENSE IN ITS CROSS-EXAMINATION, AS LIES.

The major portion of the government's case rested on the credibility of the witness, Nicoli. Yet throughout the trial the prosecution was aware that its chief witness had lied repeatedly and, even more devastating, the prosecution allowed this witness to testify extensively to the activities of an alleged co-conspirator, Roland, turned over 3500 materials implicating Roland, sat through extensive cross-examination in reference to the activities of Roland and failed to carry out its well established obligation to notify the defense that Roland was admittedly a figment of Nicoli's imagination and the relevant 3500 materials had been categorized by Nicoli as lies. The defense spent valuable hours attempting to develop a defense based on Nicoli's failure to adequately identify Roland, only to discover, at a point too late in the trial to adequately respond, that Roland did not exist and that the extensive cross-examination about the activities of Roland was incorrectly aimed.*

Cross-examination is perhaps the greatest tool available to test criminal accusations. E.g., Davis v. Alaska,

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*Up until this point, the defense had believed Nicoli would not reveal Roland's name or identity in an effort to protect him from arrest and prosecution.

415 U.S. 308 (1974); United States v. Padgent, 432 F.2d 701 (2d Cir. 1970). The danger of false accusation looms particularly large in cases of drug informants who may weave professional lies for their own devious purposes. See United States v. Padgent, supra; Johnson v. Brewer, 521 F.2d 556 (8th Cir. 1975). Congress has provided in 18 U.S.C. § 3500 that defense counsel shall be given prior statements of such witnesses for the purpose of cross-examination. But the prosecution's knowing delivery of misleading 3500 material, and the knowing enjoyment of the resulting misdirected cross-examination, defiles this right and the right of confrontation. Indeed, resort to such sporting theory of justice is substantive evidence of the weakness of the prosecutor's entire case. E.g., United States v. Remington, 191 F.2d 246, 251 (2d Cir. 1951); Hicks v. Hiatt, 64 F.Supp. 238, 246 & n.19 (M.D.Pa. 1946). See generally, 2 Wigmore, Evidence §278 (3d Ed. 1940).

The impact of cross-examination -- the witness' reaction to it and the jury's evaluation of that reaction -- is easily deflected. Cross-examination is an art and its proper function cannot be repaired by tardy disclosure of the true predicates. Cf., Grant v. Aldredge, 498 F.2d 376 (2d Cir. 1974), United States v. Pollack, 534 F.2d 964, 973-974 (D.C. Cir. 1976)(Lumbard, J., sitting by designation). The prosecutor here cheated the defendant out of basic rights and the conviction he so obtained should be reversed.

III.

DEFENDANT WAS DENIED DUE PROCESS BY THE ADMISSION INTO EVIDENCE OF HIGHLY PREJUDICIAL DOCUMENTS AND MONEY WHICH WERE OF NO PROBATIVE VALUE TO THE ISSUE ON TRIAL.

The prosecution put Dominick Mingiane, an agent of the Drug Enforcement Administration, on the stand for the purpose of testifying to the arrest of Francois Rossi in Spain in February 1973 and to introduce passports, documents and cash seized from the apartment outside of which he was arrested. Defense counsel vigorously objected to the introduction of these materials seized two years after the termination of the conspiracy*. (Tr. 663-667). The Court overruled the defense objections and allowed the material into evidence, denying the defense's motion for a mistrial (Tr. 691) and its renewed objections.

The defense objected with great force because the material to be introduced was highly prejudicial by its very nature. The knowing possession of false documents is likely evidence of some criminal activity, and the fact that the defendant was in possession of false papers at the time of his arrest in 1973 might well convince a jury that he was a "bad man" bent on wrongdoing and therefore had also committed the acts at issue. Compare, United States v. Goodwin, 492 F.2d 1141, 1148-1155 (5th Cir. 1974). Likewise, the mere possession of $19,000 in cash, which actually

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*It should be observed that by the testimony of the prosecution's own witness, the evidence presented establishes the termination of the conspiracy in 1971.

proves nothing about a conspiracy which ended two years earlier, could leave a devastating impression on the minds of the jury. Compare, Blumberg v. United States, 222 F.2d 496, 500-501 (5th Cir. 1955).

Rule 404(b) of the Rules of Evidence for United States Courts and Magistrates excludes evidence of so-called "other crimes" except for limited purposes:

> (b) Other crimes, wrongs, or acts. - Evidence of other crimes, wrongs or acts is not admissible to prove the character of a person in order to show that he acted in conformity therewith. It may, however, be admissible for other purposes, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident.

Moreover, Rule 403 of the evidence rules provides for the exclusion even of admissible evidence in order to avoid unfair prejudice:

> Rule 403. Exclusion of Relevant Evidence on Grounds of Prejudice, Confusion, or Waste of Time. Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence.

These rules are designed to block the introduction of "other crimes" evidence which should not intrude upon a defendant's trial. Naturally such evidence of criminal character is highly damning; once brought to the jury's attention it simply cannot be erased. See Marshall v. United States, 360 U.S. 310 (1959) (per curiam). See also, Burgett v. Texas, 389 U.S. 109, 115 & n.7 (1968). The rules also are intended to avoid surprise, confusion and delay litigating "other crimes" problems surfacing at trial (and, significantly, not as a result of any Grand Jury finding).

In the Second Circuit the court-made rule was stated in United States v. Bozza, 365 F.2d 206, 213 (2d Cir. 1966) (Friendly, J.):

> ...evidence of another crime may be introduced if, though only if, it is substantially relevant for some other purpose than to show a probability that the defendant committed the crime on trial because he is a man of criminal character. McCormick, Evidence §157, at 327 (1954)....

See also, United States v. Bradwell, 388 F.2d 619 (2d Cir.), cert. denied, 393 U.S. 867 (1968).

Moreover, even assuming, one, the proof of other offenses is sufficiently "plain, clear and convincing," United States v. San Martin, 505 F.2d 918, 921 (5th Cir. 1974), or "crisp, concise and persuasive," United States v. Machen, 430 F.2d 523, 526 (7th Cir. 1970); two, the conduct is not too remote in time, United States v. San Martin, supra, at 922-923; and three, the evidence bears on an actual disputed material issue in the case (beyond maligning the defendant's character) -- in other words, even assuming the offered proof meets the "substantial relevancy" test, United States v. Bozza, supra -- it still does not automatically come in. Rather, if the actual need for the evidence and its legitimate probative force, United States v. Byrd, 352 F.2d 570, 574-575 (2d Cir. 1965), do not outweigh the prejudicial character, the evidence stays out. E.g., United States v. Goodwin, 492 F.2d 1141, 1150-1152 (5th Cir. 1974). See generally, McCormick, Evidence §190, at 452-454 (2d ed. 1972). Indeed, in such cases "the trial judge has a duty in the exercise of its discretion, exclude it." United States v. Knohl, 379 F.2d 427, 438-439 (2d Cir.), cert. denied,

389 U.S. 973 (1967). Nor, it might be added, has enactment of the Federal Rules of Evidence changed the foregoing. See United States v. Burkhart, 458 F.2d 201, 207 (10th Cir. 1972) (en banc). If anything, Rule 404(b) of the Rules of Evidence for United States Courts and Magistrates reinstates the general rule of exclusion or inadmissibility for other crimes evidence for the so-called inclusionary version of the rule sometimes said to prevail in the Second Circuit. Compare United States v. Papadakis, 510 F.2d 287, 294 (2d Cir.), cert. denied, 421 U.S. 950 (1975) (inclusionary rule) with United States v. De Cicco, 435 F.2d 478, 481-484 (2d Cir. 1970) (exclusionary rule)*.

In the instant case, under any standard, the admission of the documents and money could only be prejudicial to the defendant. The prosecution never established the fact that the money belonged to Mr. Rossi. It was found at an unspecified location in the apartment outside of which the defendant was arrested,

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*Rule 404(b) plainly codifies the majority common law rule of exclusion. United States v. Burkhart, supra. See generally, United States v. San Martin, 505 F.2d 918, 921 (5th Cir. 1974). Its structure and language are in the common law exclusionary mold: the first sentence states the general rule that other crimes evidence is "not admissible" and then the second sentence states exceptions. Moreover, the Advisory Committee's Note relies on the authority of Slough & Knightly, Other Vices, Other Crimes, 41 Iowa L.Rev. 325 (1956). That article discusses the law entirely in exclusionary terms. If Congress had intended a significant departure from such tradition, it would certainly have spoken directly.

an apartment which was also occupied by another individual who may have been the owner of this cache (Tr. 723). Compare, United States v. Clemons, 503 F.2d 486, 488-491 (8th Cir. 1974). While the documents and passport appeared to belong to the defendant, this mere possession does not prove conspiracy to violate narcotics importation laws -- especially two years after the conspiracy involved ended. Compare, United States v. San Martin, 505 F.2d 918 (5th Cir. 1974). Thus, it was reversible error for the trial judge to admit this highly inflammatory evidence, in light of its minute probative value to the case at bar. Despite the legal irrelevance of this evidence, its practical effect would be to convince the jury that the defendant must be a "bad man" connected with international contraband. Moreover, although the jury had good cause to reject the direct evidence testified to by Nicoli and even the circumstantial evidence of Maniero, the jury undoubtedly credited the testimony of the arresting DEA officer. Defendant plainly was prejudiced by the introduction of this "other crimes" evidence and his conviction therefore should be reversed. Rules 404(b) and 403, Rules of Evidence for United States Courts and Magistrates.

IV.

THE REFUSAL OF THE TRIAL JUDGE TO ALLOW THE DEFENDANT TO EXPLORE FULLY THE RELATIONSHIP BETWEEN FEDERAL AGENTS AND THE BRUTALITY OF THE BRAZILIAN POLICE WAS A DENIAL OF THE DEFENDANT'S RIGHT OF CONFRONTATION AND EFFECTIVELY PROHIBITED HIM FROM PRESENTING A DEFENSE.

The bulwark of the prosecution's case was the testimony of the unindicted co-conspirator, Nicoli. If the jury chose to believe his testimony, they would have to find the defendant guilty. Therefore, an essential element of the defense was the establishment of the lack of credibility of Nicoli. In order to convince the jury that the witness perjured himself, the cross-examination focused on two facets: (1) the witness' own admission that he had lied (see Argument, Point II) and the witness' strong motive to make himself valuable to the American government as insurance against his being returned to Brazil. To fully apprise the jury of the motive of the witness, it was essential that the defense be allowed to cross-examine the witness in detail on his treatment in Brazil and that the defense be allowed to demonstrate to the jury the relationship between the Brazilian actions and the American agents.

The trial judge himself recognized the right of a jury to inquire into the motive of a witness:

> I will allow the defendant to try to show that this witness has reasons for not wanting to return to Brazil and if you credit the testimony that he has certain hopes of remaining here, that he may very well understand or believe that his cooperation would be a factor in keeping him here. It is only for that limited purpose.
>
> (Tr. 443)

In addition, the judge allowed the defendant to establish the severe brutality to which the witness was exposed in the

hands of the Brazilian police. However, the court refused to allow the defense to establish the vital point tending to prove the strong motive of the witness for cooperating and perhaps committing perjury -- the power of the American agents to return the defendant to the hands of the Brazilians and the horrible but real possibility that the United States agents had utilized the Brazilian police to "prepare" a cooperative witness for them (Tr. 919). Even further, the likelihood existed that the witness understood the veiled threat behind the friendliness of the American sanctuary: if he did not make himself useful, not only would he not reap the benefits of a friendly government, but he would be returned to Brazilian authorities with the dreaded imprimatur of American displeasure on his head.

Our courts have long recognized the paramount importance of the right of confrontation. E.g., Davis v. Alaska, 415 U.S. 308 (1974); Johnson v. Brewer, 521 F.2d 556 (8th Cir. 1975). This right becomes especially critical when the witness involved is an accomplice who "may well have an important personal stake in the outcome of the trial." United States v. Padgent, 432 F.2d 701, 704 (2d Cir. 1970).

The trial judge's refusal to allow the defense to explore the relationship between the witness' motive for cooperating and the brutality of the Brazilian police was compounded by the refusal of the trial judge to charge the jury in detail on motive, bias, and interest as requested by defense counsel:

> Mr. Krieger: All I want is the complete statement of the law from the Court, not the judgment.

> The Court: Yes. I will give them a brief statement on motive.
>
> (Tr. 445) (emphasis added)

This is exactly what the court did (Tr. 944-945).

It is settled law that the claim that the defendant has been framed by accomplice witnesses seeking to gain favor with the government is a legitimate defense requiring an appropriate theory of the defense instruction. United States v. Alfonso-Perez, ___ F.2d ___, No. 75-1395, 2d Cir. May 17, 1976; United States v. Vole, 435 F.2d 774 (7th Cir. 1970). Indeed, the evidence relevant to the issue need not be sufficient to raise a reasonable doubt in order to require a jury instruction. Tatum v. United States, 190 F.2d 612, 615-16 (D.C. Cir. 1951).

Here, the trial court committed reversible error in refusing to allow the defendant to inquire fully into the possible motive and bias of the witness. This refusal was compounded by his rejection of the defendant's proposed charge on the theory of the case, i.e., that the extreme fear of the witness of the brutality of the Brazilian police was highlighted by the possibility that the the brutality was instigated and could be re-instigated by the American police and was a strong motive for cooperation, to the point of fabrication. Thus, the defendant was deprived of a substantial area of confrontation against his principal accuser and denied properly instructed jury judgment on the accusations made*.

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*Defendant is not concerned with the Court's general charge to the jury. Rather, he sought to develop the evidence of Nicoli's motive, bias and interest fully and to obtain a contemporaneous instruction on this defensive theory. It is this restriction on cross-examination which was compounded by the court's brief instruction at the time.

CONCLUSION

For the reasons outlined above, the judgment below should be reversed and the case remanded for a new trial.

Respectfully submitted,

ALBERT J. KRIEGER
745 Fifth Avenue
New York, New York 10022

Of Counsel:

DONNA R. BLAUSTEIN
1753 Alton Road
Miami Beach, Florida 33139

JOSEPH BEELER
2829 Bird Avenue
Coconut Grove
Miami, Florida 33133

Attorneys for
Defendant-Appellant

Dated: August 20, 1976

UNITED STATES COURT OF APPEALS

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FRANCOIS ROSSI.

Defendant- Appellant.

CERTIFICATE OF SERVICE

I, Joseph Beeler, hereby certify that I have served each party required to be served by placing two copies each of the Brief for Appellant and Appendix for Appellant in a postage prepaid container and placing said container in a United States Mail receptacle in a Main United States Post Office, San Francisco, California, addressed as follows:

David G. Trager
United States Attorney
United States Courthouse
225 Cadman Plaza East
Brooklyn, New York 11201

DATED: August 20, 1976

Joseph Beeler